

Internal Revenue Service

Number: **201909006**
Release Date: 3/1/2019
Index Number: 911.11-03

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:INTL:B02
PLR-123703-18

Date:
November 29, 2018

TY:

Legend

Taxpayer =

Employer X =

Employer Y =

Country A =

Country B =

Year 1 =

Year 2 =

Year 4 =

Year 5 =

Year 6 =

Year 7 =

Dear :

This is in response to a letter dated June 25, 2018 requesting permission to reelect the foreign earned income exclusion under section 911 of the Internal Revenue Code (the Code).

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Taxpayer is a United States citizen who lived and worked outside the United States from Year 1 to Year 2. On his joint United States income tax returns filed with his wife for Year 1 and Year 2, Taxpayer claimed the foreign earned income exclusion under section 911(a) of the Code. Taxpayer returned to the United States in November of Year 2. Apart from living and working outside the United States from January through April of Year 4, a period for which Taxpayer represents that he did not claim the foreign earned income exclusion or take the foreign tax credit because he did not qualify for them, Taxpayer lived and worked in the United States until December of Year 5. In December of Year 5, Taxpayer moved from the United States to Country A and commenced work with Employer X. Taxpayer continued to work for Employer X in Country A during Year 6. Taxpayer claimed the foreign tax credit for Year 6 because he determined that it would be more beneficial to credit Country A taxes than to exclude foreign income earned in Country A for that year.

In Year 7, Taxpayer accepted a job offer from Employer Y, requiring him to move from Country A to Country B in March of Year 7. Taxpayer's income earned in Country B is subject to a lower rate of tax than it was in Country A. Taxpayer therefore requests permission to reelect the foreign earned income exclusion pursuant to section 911 of the Code for Year 7 and subsequent taxable years.

Section 911 of the Code permits certain taxpayers to elect to exclude from gross income their foreign earned income and housing cost amounts. Under Treas. Reg. § 1.911-7(b)(1), the election applies to the taxable year for which it is made and for all subsequent taxable years, unless revoked by the taxpayer. Treas. Reg. § 1.911-7(b)(1) prescribes a method by which a taxpayer may revoke an election to exclude foreign earned income (i.e., by filing a statement revoking any previously made election). It does not, however, purport to provide the exclusive method for revoking such an election. Section 911(e)(2) provides that once revoked, the election may not be made again by the taxpayer until the sixth taxable year after the year in which the revocation was made unless the Commissioner consents to the reelection.

Treas. Reg. § 1.911-7(b)(2) provides that if an individual revokes an election under Treas. Reg. § 1.911-7(b)(1), and desires to reelect the same exclusion within the next five years, the individual must obtain permission by requesting a ruling. The Service may permit the taxpayer to reelect the foreign earned income exclusion before the sixth year after considering all of the facts and circumstances. Treas. Reg. § 1.911-7(b)(2) provides that relevant facts and circumstances may include a period of United States residence, a move from one foreign country to another foreign country with differing tax rates, a substantial change in the tax laws of the foreign country of residence or physical presence, and a change of employer.

Taxpayer effectively revoked the foreign earned income exclusion for Year 6 by claiming the foreign tax credit. See Rev. Rul. 90-77, 1990-2 C.B. 183. Taxpayer wishes to reelect the exclusion for Year 7, which is within five years of Year 6.

Therefore, Taxpayer requests permission to reelect the foreign earned income exclusion. Taxpayer has represented that he changed employers and moved from Country A to Country B in Year 7. Taxpayer has also represented that the applicable foreign tax rates differ between Country B and Country A.

Accordingly, based solely on the information and representations set forth above, Taxpayer may reelect the section 911 foreign earned income exclusion for Year 7 and subsequent tax years.

Except as otherwise expressly provided herein, no opinion is expressed as to whether Taxpayer otherwise satisfies the requirements of section 911 for excluding foreign earned income and housing amounts from gross income, including without limitation whether Taxpayer is a qualified individual within the meaning of section 911(d). Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, if Taxpayer files his return electronically, he may satisfy this requirement by attaching to his return a statement that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Jeffery G. Mitchell
Chief, Branch 2
(International)

cc: